

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BILLY G. ASEMANI,

Plaintiff,

v.

**UNITED STATES VICTIMS OF STATE
SPONSORED TERRORISM FUND,**

Defendant.

**Civil Action 2:21-cv-4098
Judge Edmund A. Sargus
Magistrate Judge Kimberly A. Jolson**

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff’s Motion for Leave to Appeal in forma pauperis. (Doc. 84). On March 15, 2023, the Court granted Defendants’ Motion to Dismiss for lack of jurisdiction and failure to state a claim upon which relief can be granted. (Doc. 67). Plaintiff appealed the judgment (Doc. 69), and, now, moves to proceed in forma pauperis. (Doc. 84).

Federal Rule of Appellate Procedure 24(a)(2) provides that when a district court denies a motion to proceed with appeal in forma pauperis, “it must state its reasons in writing.” Further, under the Prison Litigation Reform Act of 1996 (“PLRA”), an incarcerated plaintiff may not proceed in forma pauperis on more than three occasions when such action “was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). This is commonly known as the “three strikes rule.” Applying these standards, the Undersigned recommends that Plaintiff not be granted leave to appeal in forma pauperis under the 28 U.S.C. § 1915(g) “three strikes” provision.

Plaintiff has three strikes. *See, e.g., Asemani v. U.S. Citizenship & Immigration Servs.*, 797 F.3d 1069, 1072–73 (D.C. Cir. 2015); *Asemani v. The Islamic Republic of Iran*, Case No. 17-CV-9562, Dkt. 3, (S.D.N.Y Dec. 7, 2017) (dismissing same cause of action because Plaintiff has struck

out); *Asemani v. U.S. Citizenship & Immigration Servs.*, No. 11-CV-2268 (RJL) (D.D.C. Dec. 28, 2012) (listing strikes).

Plaintiff is also on notice that, because he has had a total of three or more federal lawsuits dismissed for failure to state a claim, he may not file suit in federal court without prepaying the filing fee unless he is in imminent danger of serious physical injury. So, as there is nothing in the Complaint or Plaintiff's Motion for Leave to Appeal in formal pauperis suggesting that Plaintiff is "under imminent danger of serious injury[.]" he cannot meet this exception to the three strikes rule. *See Asemani v. The Islamic Republic of Iran*, Case No. 17-CV-9562, Dkt. 3, (S.D.N.Y Dec. 7, 2017).

Accordingly, the Undersigned **RECOMMENDS** that Plaintiff be **ORDERED** to pay the full \$505 appellate filing fee within thirty days of the filing of the Court adopting this Report and Recommendation. Plaintiff is hereby notified that his failure to pay the full fee within the requisite thirty (30) day period will result in the dismissal of his action. *In re Alea*, 286 F.3d 378, 382 (6th Cir. 2002).

Procedure on Objections to Report and Recommendation

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a de novo determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence, or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The parties

are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

IT IS SO RECOMMENDED.

Date: September 8, 2023

/s/ Kimberly A. Jolson
KIMBERLY A. JOLSON
UNITED STATES MAGISTRATE JUDGE